

## Message Text

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ACTION SS-15

INFO OCT-01 EUR-12 IO-13 ISO-00 EPA-01 OES-07 COME-00  
DOTE-00 EB-08 DODE-00 ACDA-12 AGRE-00 AID-05  
CEA-01 CEQ-01 CG-00 CIAE-00 DLOS-09 SOE-02 DOE-15  
FMC-01 TRSE-00 H-01 INR-10 INT-05 JUSE-00 L-03  
NSAE-00 NSC-05 NSF-01 OMB-01 PA-01 PM-05 SP-02  
ICA-11 OIC-02 /150 W  
-----048796 090915Z /20

P 090825Z MAY 78  
FM USMISSION GENEVA  
TO SECSTATE WASHDC PRIORITY 9368  
INFO AMEMBASSY LONDON  
AMEMBASSY MOSCOW

C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 07035

FOR D AND S/MS

DEPT PASS EPA-BARBARA BLUM, NOAA-RICHARD FRANK, TRANSPOR-  
TATION-RADM WALLACE, MARAD-ROBERT BLACKWELL, AND DOD-DAVID  
MCGIFFERT

E.O. 11652: GDS  
TAGS: PLOS  
SUBJECT: LOS - POLLUTION

1. SOVIETS TELL US THEY FINALLY LEARNED LATE LAST WEEK OF  
APPROACH TO DOBRYNIN ON US ENVIRONMENTAL INITIATIVE. IN  
RESPONSE TO INTENSIVE PERSONAL EFFORTS WITH DEPUTY FOREIGN  
MINISTER KOZYREV, THEY HAVE FINALLY PRESENTED REVISED  
COMPROMISE POLLUTION PACKAGE AFTER EXTENSIVE NEGOTIATIONS  
WITH THEM, UK AND OTHER MARITIMES. AMENDMENTS WOULD RESULT  
IN SIGNIFICANT IMPROVEMENT OF ANTI-POLLUTION POWERS IN  
TERRITORIAL SEA AND ECONOMIC ZONE, ACCOMMODATING MOST  
POINTS SOUGHT BY USDEL (TEXT IN PARA 6). PACKAGE VIABLE  
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HERE ONLY IF USDEL AGREES TO SOVIET REQUEST THAT US WILL  
NOT SEEK FURTHER CHANGES IN LOS POLLUTION TEXT IN CONTEXT  
TIMELY CONCLUSION OF OVERALL LOS TREATY PACKAGE AND IF US  
AGREES TO REQUEST OF UK AND OTHER MARITIMES TO GOOD FAITH  
EFFORT BY ADMINISTRATION TO PREVENT IMPLEMENTATION OF ANY  
UNILATERAL DISCHARGE STANDARDS BEYOND 12 MILES (I.E., US  
REGS BEYOND 12 MILES WOULD NOT AT PRESENT EXCEED '73 MARPOL

CONVENTION STANDARDS AND, IF POSSIBLE, AMEND US STATUTE TO MAKE CLEAR US IS NOT ASSERTING RIGHT TO EXCEED INTERNATIONAL STANDARDS BEYOND 12 MILES--SEE PARA 4 BELOW).

2. USDEL ASSESSMENT IS THAT PACKAGE IS BEST ATTAINABLE. AMOCO CADIZ INCIDENT CONTRIBUTED TO FAVORABLE PSYCHOLOGICAL ATTITUDE. DESIRE TO AVOID IMPLEMENTATION OF US UNILATERAL STANDARDS GAVE SUFFICIENT PRACTICAL INCENTIVE TO MARITIME STATES. UNDER PROCEDURES IN EFFECT HERE, BEGINNING OF THIS WEEK IS EFFECTIVELY LAST OPPORTUNITY FOR PREPARING COMMITTEE SUPPORT FOR CHANGES ADEQUATE TO ENSURE THAT THEY SURVIVE PLENARY SCRUTINY.

3. FROM DOMESTIC PERSPECTIVE, WEAKEST PART OF PACKAGE IS THAT THERE IS NO CHANGE IN ARTICLE 229 (FLAG STATE PRE-EMPTION). SOVIETS SEEM PERMANENTLY FROZEN ON ISSUE. CONCERNED AGENCIES ON USDEL HAVE AGREED THAT ESTABLISHMENT WITHIN EXECUTIVE BRANCH OF INTER-AGENCY PROCEDURES FOR OBJECTIVE SCRUTINY BY EPA, COAST GUARD, AND OTHER DOMESTIC AGENCIES OF FLAG STATE RECORD IN ENFORCING POLLUTION REQUIREMENTS IS NECESSARY ELEMENT FOR DOMESTIC ACCEPTANCE OF PRE-EMPTION IN LOS TREATY AS DRAFTED. MAIN POINT IS THAT BILATERAL RELATIONS WOULD NOT RPT NOT ROUTINELY AFFECT SUCH DETERMINATIONS, ALTHOUGH OF COURSE SECSTATE WOULD BE CONSULTED. (N.B. IT IS NOT RPT NOT ANTICIPATED THAT USSR WOULD BE AFFECTED.)  
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4. WE BELIEVE AMENDMENTS AND PARA 3 ABOVE WOULD PROBABLY NOT BE SUFFICIENT TO PERSUADE CONGRESS TO ACCEPT REVISION OF CLEAN WATER ACT ABSENT ADMINISTRATION SUPPORT FOR IMMEDIATE IMPLEMENTATION OF US ENFORCEMENT IN PORT WITH RESPECT TO DISCHARGES OFF US COAST BEYOND 12 MILES (SEE ICNT ARTICLE 219). IN OTHER WORDS, AS A CONDITION OF PORT ENTRY, ALL VESSELS VOLUNTARILY ENTERING US PORTS WOULD BE SUBJECT TO PROSECUTION FOR VIOLATION OF INTERNATIONAL RPT INTERNATIONAL DISCHARGE STANDARDS OFF US COAST BEYOND 12 MILES (E.G., IN 200-MILE ZONE). EPA REP BELIEVES THAT CONGRESS PROBABLY WOULD NOT ACCEPT EXCLUSIVELY INTERNATIONAL STANDARDS BEYOND 12 MILES UNLESS WE AGREE TO IMMEDIATE IMPLEMENTATION OF ALL OF ANNEX 2 OF 1973 MARPOL CONVENTION, WHICH HAS HIGHER RPT HIGHER STANDARDS IN SOME RESPECTS THAN PLANNED EPA UNILATERAL HAZARDOUS SUBSTANCES STANDARDS. COAST GUARD REP AND OTHERS ARGUE THAT IMPLEMENTATION OF SOME OF THE ANNEX 2 STANDARDS MAY HAVE TO BE DELAYED IN PART BECAUSE OF LACK OF ON-SHORE RECEPTION FACILITIES. USDEL SUGGESTS STATUTE IMPLEMENT ALL RPT ALL OF ANNEX 2 DISCHARGE STANDARDS, BUT ALLOW ADMINISTRATOR OF EPA TO SUSPEND APPLICATION OF PARTICULAR DISCHARGE STANDARDS IN

PARTICULAR CASES PENDING COMPLETION OF ADEQUATE RECEPTION FACILITIES. I AM PREPARED TO TESTIFY IN FAVOR OF THIS APPROACH.

5. IN VIEW TIME CONSTRAINTS, USDEL WILL PROCEED WITH PACKAGE UNLESS OTHERWISE ADVISED, SUBJECT TO DRAFTING CORRECTIONS. WE NOTE THAT INCREASINGLY SHIPPING-ORIENTED ATTITUDES (AND TRADITIONALLY COOL ATTITUDES GENERALLY) OF LDC'S TO STRICT ENVIRONMENTAL MEASURES REMAINS OBSTACLE OF UNCERTAIN PROPORTIONS. WE HAVE ASSUMED THAT ONLY WAY TO OVERCOME THEIR SUSPICIONS WAS TO ESTABLISH SITUATION IN WHICH TRADITIONAL MARITIME COUNTRIES WOULD REASSURE THEM, AND WE INTEND TO INSIST ON THIS FROM MARITIMES IN RETURN. WITH RESPECT TO COMMITMENT TO SOVIETS, IN PLACE OF PARA 8 OF SOVIET TEXT, WE WOULD INDICATE OUR WILLINGNESS TO STATE  
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ACTION SS-15

INFO OCT-01 AF-10 ARA-10 EA-10 EUR-12 NEA-11 IO-13  
ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00  
CIAE-00 COME-00 DLOS-09 DODE-00 DOTE-00 EB-08  
EPA-01 SOE-02 DOE-15 FMC-01 TRSE-00 H-01 INR-10  
INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-07  
OMB-01 PA-01 PM-05 SP-02 ICA-11 OIC-02 /191 W  
-----048870 090917Z /20

P 090825Z MAY 78  
FM USMISSION GENEVA  
TO SECSTATE WASHDC PRIORITY 9369  
INFO AMEMBASSY LONDON  
AMEMBASSY MOSCOW

C O N F I D E N T I A L SECTION 02 OF 03 GENEVA 07035

FOR D AND S/MS

THAT IF ALL AMENDMENTS ARE INCORPORATED IN NEW TEXT AT THIS SESSION, USDEL, WHILE NOT FULLY SATISFIED, WOULD NOT INSIST

ON FURTHER AMENDMENTS TO POLLUTION TEXT IN CONTEXT OF  
TIMELY CONCLUSION OF OVERALL LOS TREATY PACKAGE ACCEPTABLE  
TO US.

6. BEGIN TEXT - I. ARTICLE 195 (PARA 5)

ADD THE FOLLOWING AS A NEW PARAGRAPH 5: "5. THE MEASURES  
TAKEN IN ACCORDANCE WITH THE PRESENT PART SHALL INCLUDE  
THOSE NECESSARY TO PROTECT AND PRESERVE RARE OR FRAGILE  
ECOSYSTEMS AS WELL AS THE HABITAT OF DEPLETED, THREATENED,  
OR ENDANGERED SPECIES AND OTHER MARINE LIFE".

2. ARTICLE 212 (PARA I, 3 AND 6)

PARAGRAPH I: ADD THE FOLLOWING AT THE END OF THE FIRST  
SENTENCE: "...AND PROMOTE THE ADOPTION, IN THE SAME MANNER,  
WHENEVER APPROPRIATE, OF ROUTING SYSTEMS DESIGNED TO MINI-  
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MIZE THE THREAT OF ACCIDENTS WHICH MIGHT CAUSE POLLUTION  
OF THE MARINE ENVIRONMENT, INCLUDING THE COASTLINE AND  
RELATED INTERESTS OF COASTAL STATES."

PARAGRAPH 3: ADD THE FOLLOWING AT THE END OF THE PARAGRAPH:  
"...INCLUDING VESSELS EXERCISING THE RIGHT OF INNOCENT  
PASSAGE."

PARAGRAPH 6: ADD THE FOLLOWING AS A NEW PARAGRAPH 6: "THE  
INTERNATIONAL RULES AND STANDARDS REFERRED TO IN THIS  
ARTICLE INCLUDE, INTER ALIA, THOSE RELATED TO PROMPT  
NOTIFICATION TO COASTAL STATES, WHOSE COASTLINES OR RELATED  
INTERESTS MAY BE AFFECTED BY INCIDENTS INCLUDING MARITIME  
CASUALTIES INVOLVING DISCHARGES OR PROBABILITY OF DIS-  
CHARGES".

3. ARTICLE 212 (2) BIS OR NEW ARTICLE - PORT ENTRY  
REQUIREMENTS.

STATES WHICH ESTABLISH PARTICULAR REQUIREMENTS IN RESPECT  
OF THE PREVENTION, REDUCTION AND CONTROL OF THE POLLUTION  
OF THE MARINE ENVIRONMENT AS A CONDITION FOR THE ENTRY OF  
FOREIGN VESSELS INTO THEIR PORTS OR INTERNAL WATERS OR A  
CALL AT THEIR OFF-SHORE TERMINALS SHALL GIVE DUE PUBLICITY  
TO SUCH REQUIREMENTS, AND SHALL NOTIFY THEM TO THE COMPE-  
TENT INTERNATIONAL ORGANIZATION BEFORE THEIR ENTRY INTO  
EFFECT.

WHENEVER SUCH REQUIREMENTS ARE ESTABLISHED IN IDENTICAL  
FORM BY TWO OR MORE STATES IN AN ENDEAVOUR TO HARMONIZE  
POLICIES, THE NOTIFICATION SHALL INDICATE WHICH STATES ARE  
PARTICIPATING IN SUCH COOPERATION. EVERY STATE SHALL  
REQUIRE THE MASTER OF A VESSEL FLYING ITS FLAG OR OF ITS  
REGISTRY, WHEN NAVIGATING WITHIN THE TERRITORIAL SEA OF A  
STATE PARTICIPATING IN SUCH COOPERATION, TO FURNISH, UPON

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REQUEST OF THAT STATE, INFORMATION ON THE AVAILABILITY ON BOARD THE VESSEL OF APPROPRIATE CERTIFICATES, ATTESTING THAT THE VESSEL MEETS THE REQUIREMENTS REGARDING THE PREVENTION, REDUCTION AND CONTROL OF THE POLLUTION OF THE MARINE ENVIRONMENT, ESTABLISHED BY THE STATE PARTICIPATING IN SUCH COOPERATION, TO A PORT OF WHICH THE VESSEL IS PROCEEDING. THIS PROVISION SHALL BE WITHOUT PREJUDICE TO THE CONTINUED EXERCISE BY A VESSEL OF ITS RIGHT OF INNOCENT PASSAGE OR TO THE APPLICATION OF PARAGRAPH 2 OF ARTICLE 25.

4. ARTICLE 213

AMEND PARAGRAPH 1 BY CHANGING THE PERIOD AT THE END OF THE FIRST SENTENCE TO A COMMA AND ADDING THE FOLLOWING: "AND THE SAFETY OF AIR NAVIGATION."

5. ARTICLE 221(6)

1. CHANGE THE OPENING CLAUSE TO READ: "WHERE THERE IS CLEAR OBJECTIVE EVIDENCE THAT A VESSEL NAVIGATING IN THE EXCLUSIVE ECONOMIC ZONE..." AND DELETE THE CLAUSE "FLAGRANT OR GROSS".

2. DRAFT THE FINAL CLAUSE OF THIS PARAGRAPH AS FOLLOWS:

"...CAUSE PROCEEDINGS, INCLUDING ARREST OF THE VESSEL, TO BE TAKEN IN ACCORDANCE WITH ITS LAWS".

6. ARTICLE 222

CHANGE THE ARTICLE ON THE BASIS OF THE AGREED JOINT APPROACH WITH THE AIM TO ACCOMMODATE THE FRENCH PROPOSAL.

7. ARTICLE 231 (PARA I)

"I. ONLY MONETARY PENALTIES MAY BE IMPOSED WITH RESPECT TO VIOLATIONS OF NATIONAL LAWS AND REGULATIONS OR APPLICABLE INTERNATIONAL RULES AND STANDARDS, FOR THE PREVENTION, REDUCTION AND CONTROL OF POLLUTION OF THE MARINE ENVIRONMENT FROM VESSELS COMMITTED BY FOREIGN VESSELS BEYOND THE INTERNAL WATERS, EXCEPT IN CASE OF A WILFUL AND SERIOUS ACT OF POLLUTION IN THE TERRITORIAL SEA, IN WHICH CASE  
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OTHER PENALTIES MAY BE IMPOSED".

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INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-07  
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P 090825Z MAY 78

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 9370

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

C O N F I D E N T I A L SECTION 03 OF 03 GENEVA 07035

8. AFTER INTRODUCING THE FOREGOING CHANGES DELEGATIONS,  
PARTICIPANTS OF THE AGREEMENT, MAKE STATEMENTS AT A FORMAL  
PLENARY MEETING TO THE EFFECT THAT ALTHOUGH THEY ARE NOT  
SATISFIED WITH THE SECTION ON POLLUTION, THEY NEVERTHELESS  
ARE READY TO AGREE WITH IT AS FINAL COMPROMISE. END TEXT.  
RICHARDSON

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## Message Attributes

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**Concepts:** LAW OF THE SEA, TERRITORIAL WATERS, WATER POLLUTION CONTROLS  
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